IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 8 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX, Ahmedabad.

Versus

AMBALAL SARABHAI CHARITY TRUST

Appearance:

Mr. B.B. Naik for applicant.

Mr. B.D. Karia for respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.A.PUJ

Date of decision: 07/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

This Court, vide its order dated 7.11.1985 in

Income Tax Application No. 195 of 1985, preferred by the Revenue u/s. 256(2) of the Income Tax Act, 1956, had directed the Tribunal to draw up a Statement of Case and refer the following questions for our opinion :

1. "Whether on the facts and in the circumstances of the case, the Tribunal has been right in law in holding that Ahmedabad Mfg. & Calico Prtg.Co. Ltd. is not a concern in which persons referred to in sec. 13(3) of the I.T. Act, 1961 has substantial interest and hence dividend income from the shares of that company is exempt u/s. 11 of the Act ?"

2. "Whether the Tribunal has been right in law in holding that section 13(3) is not applicable to the funds diverted to Smt. Saraladevi Sarabhai or M/s. Karamchand Premchand Pvt.Ltd. to the extent of Rs. 68,942/= and hence exemption u/s. 11 of the I.T. Act, 1961 cannot be denied ?"

3. "Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has been right in law in holding that since exemption u/s. 11 of the I.T. Act, 1961 was available to the assessee the assessee was entitled to the deduction of expenditure worth Rs. 86,473/= spent for the objects of the trusts ?"

Accordingly, the Tribunal had drawn up a Statement of the Case on 5-2-1987, wherein it is observed by the Tribunal that, "Both the parties agreed and stated that since the Tribunal has already drawn up a Statement of the Case and has referred the issue raised in questions No. 1 and 3 above to the Hon'ble High Court vide the Statement of the Case dated 3-7-1984 in R.A. No. 160/Ahd/84, nothing further is required to be done in this regard." The Paper Book of the present Reference does not contain any Annexures except the Statement of the Case drawn on 5-2-1987, wherein it is observed in Para-5 that, "Both the parties agreed and stated that they would request the Registry of the Hon'ble High Court to tag this Reference along with the Reference already sent by the Tribunal so that both the References could be heard together by Their Lordships." The order drawing the Statement of the Case

further contains a Note that, "Both the parties agreed and stated that since in the earlier Statement of the Case the Tribunal has annexed the relevant documents, there is no need to send again the same annexures along with this Statement of the Case." It is precisely for this reason that on the cover page of the Paper Book of the present Reference, it is written as "Income Tax Reference No. ITR 8/87 with 142/85". We find a copy of judgment delivered by this Court on 21-9-2000 in I.T.R. No. 142/85, along with the Paper Book of the present Reference, from which it appears that the attention of this Court was not drawn to the pendency of this Reference and hence it was not decided along with I.T.R No. 142/85.

2. At the time of hearing of this Reference, neither party is having with them the copy of Paper Book of disposed Reference No. 142/85 nor necessary annexures and hence we proceed to dispose of the present Reference on the basis of the Paper Book which only contains the Statement of Case dated 5-2-1987 drawn by the Tribunal and also on the basis of copy of judgment delivered by this Court on 21-9-2000, in I.T.R. No. 142/85.

3. In I.T.R. No. 142/85, following three questions were referred to by the Tribunal for the opinion of this Court :

1. Whether it would be necessary that at least 20% of the voting power is exercisable by the assessee or by the persons referred to in sub-clause (3) of section 13 of the Income tax Act, 1961 in view of explanation III to section 13 of the said Act?

2. Whether the shares held by charitable trust could be said to have been held by the assessee or the persons referred to in sub-section (3) of section 13 of the said Act?

3. Whether the assessee was entitled to exemption of the dividend income amounting to Rs. 1,777/= ?

While deciding the above Reference, this Court has observed, that while deciding the appeal by the Tribunal a reference was made with regard to the case of Sarabhai Foundation against which Income Tax Reference No. 557 of

1980 was filed and the said Reference was decided on 16.9.1983. It was further observed, that the Questions No. 1 and 2 referred to in ITR No. 142 of 1985 were, through oversight, incorporated and hence the said two questions were not answered by the Court. The whole discussion was, therefore, confined to the Question No.3 in ITR No. 142 of 1985.

4. As far as Question No.1 in the present Reference is concerned, it was submitted before us that while confirming the order of A.A.C. on this point, the Tribunal had followed its own order passed in the case of Sarabhai Foundation (ITA No. 93/Ahd/77-78 dated 15.12.79. At the time of hearing of Reference of Sarabhai Foundation, being I.T.R. No. 557 of 1980, as is observed in the judgment dated 16-9-93 that "in view of the decision of this Court in the case of C.I.T. Vs. Insaniyat Trust, reported in (1988) 173 ITR 2248, if a trust received as donation some shares, then provision of Section 13(2)(h) would not be applicable and the dividend received from the shares by the assessee was entitled to exemption. With regard to the dividend from the shares of Calico Mills Ltd., which were purchased by the assessee in that case, this Court has observed that in view of the very small tax effect involved in that case, the assessee had not pressed the question whether the Calico Mills Ltd., was a concern wherein the persons referred to in Section 13(3) had substantial interest on the basis of Explanation III to Section 13 of the Act, i.e. 20% of Voting Power and the beneficial ownership. Even in assessee's own case, being I.T.A. No. 142 of 1985, this Court did not answer Questions Nos. 1 & 2, by holding that perhaps on account of some inadvertences, Questions Nos. 1 and 2 have been incorporated in the said Reference.

5. Since the first part of the Question No.1 referred to us in the present Reference is not answered by this Court either in the case of C.I.T. Vs. Insaniyat Trust, reported in (1988) 173 ITR 248, or in Sarabhai Foundation, being I.T.R. No. 557 of 1998 or in assessee's earlier Reference No. 142/85, for the reasons stated in the respective decisions, we decline to answer the first part of Question No.1, especially when neither any material was placed nor any contention was urged in this behalf before us and further-more, the second part of Question No.2 is already answered by this Court in I.T.R. No. 142 of 1985. The second part of Question No.1 deals with the dividend income received by the assessee from the shares of Calico Mills Company. The third question referred to in I.T.R. No. 142 of 1985 is

also in respect of the dividend income amounting to Rs. 1,777/= received from the shares of Calico Mills Company. The said question is answered by this Court in the following terms :

"A. The dividend, which was received by the assessee on the shares which were donated to the assessee and shares which were received by the assessee by way of bonus, the provisions of Section 13(2(h) would not apply and, therefore, the said amount of dividend would be exempted from tax.

B. So far as shares which were purchased by the assessee are concerned, the dividend which the assessee had received thereon would be subject to tax as the said shares would be subject to the provisions of Section 13 (2)(h) of the Act.

From the question which has been referred to this Court, it is not clear as to how much dividend was received by the assessee on the shares which were donated to the assessee and the shares which were received by the assessee by way of bonus; moreover, it is also not clear as to what was the amount of dividend which the assessee had received on the shares which were purchased by the assessee.

In view of the fact that the details with regard to break-up of the dividend as mentioned above are not available to this Court, we answer the question as under:

The dividend which was received by the assessee on the shares which were donated to the assessee and the shares which were received by way of bonus by the assessee, would be exempted as per provisions of the Act and the dividend which was received on the shares which were purchased by the assessee would be subject to the provisions of Section 13(2)(h) of the Act. We, thus, answer the question as stated above and leave it to the Tribunal to ascertain the relevant facts and pass appropriate orders." The Question No.1 is answered accordingly.

6. As far as Question No.2 is concerned, it is held by both the appellate authorities below that Smt. Saraladevi Sarabhai had donated 51 equity shares of Karamchand Premchand Pvt.Ltd. subject to the conditions that the loanee was to discharge the liability of Rs. 68,942/= in favour of M/s. Karamchand Premchand Pvt.Ltd. It was only on this condition that the shares were donated by Smt. Saraladevi Sarabhai to the

assessee-trust and the assessee-trust had to pay the said amount to the firm of M/s. Karamchand Premchand Pvt.Ltd. By no stretch of imagination, it can be said that the assessee has voluntarily diverted its funds and in this view of the matter, provisions of Section 13(3) of the Act cannot be applied. We are, therefore, of the view that the provisions of Section 13(3) are not applicable to the funds said to have been diverted to Smt. Saraladevi Sarabhai or M/s. Karamchand Premchand Pvt.Ltd., to the extent of Rs. 68,942/=, and hence the exemption under Section 11 of the Act cannot be denied to the assessee-trust. We, therefore, answer the Question No.2 in affirmative, in favour of the assessee and against the Revenue.

7. As far as Question No.3 is concerned, we are of the view that the same is consequential. Once it is held that the income of the assessee-trust is exempt under Section 11 of the Act, the assessee is entitled to deduction of expenditure worth Rs. 86,473/= spent for the objects of the trust. We, therefore, answer the Question No.3 in affirmative, in favour of the assessee

8. The Reference is accordingly disposed of with no order as to costs.

[R.K. Abichandani, J.]

rmr. [K.A. Puj, J.]